

SEP 26 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LU DE ZHAO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72332

Agency No. A95-592-084

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 12, 2005^{**}

Before: REINHARDT, RYMER and HAWKINS, Circuit Judges.

Lu De Zhao, a native and citizen of China, petitions for review of the Board of Immigration Appeals' decision adopting and affirming the immigration judge's

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(“IJ”) denial of her application for asylum, withholding of removal and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We grant the petition and remand in part; we deny in part.

Substantial evidence does not support the IJ’s decision because the IJ failed to address the individual and cumulative effects of the hardships suffered by Zhao, including economic deprivation and harm to her family, because of her parents’ violation of China’s one-child policy and resistance to sterilization. *See Zhang v. Gonzales*, 408 F.3d 1239, 1247-49 (9th Cir. 2005). Accordingly, we grant the petition as to asylum and remand so that the IJ may make a new determination of Zhao’s eligibility for asylum. *See id.* at 1249.

Substantial evidence does support the IJ’s denial of withholding of removal. Despite the errors which undermine the IJ’s asylum determination, the record does not demonstrate that it is more likely than not that Zhao will be harmed if returned to China. *See id.* at 1250. We deny the petition as to withholding of removal.

Zhao waives review of her religious persecution and CAT claim by failing to raise the issues in her opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

GRANTED and REMANDED in part; DENIED in part.

Judge Rymer would deny the petition.